

# Schapiro Exhibit 1

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
 PARTNERS, COUNTRY MUSIC. )  
 TELEVISION, INC., PARAMOUNT )  
 PICTURES CORPORATION, and BLACK )  
 ENTERTAINMENT TELEVISION, LLC, )  
 )  
 Plaintiffs, )  
 )  
 vs. ) NO. 07-CV-2103  
 )  
 YOUTUBE, INC., YOUTUBE, LLC, )  
 and GOOGLE, INC., )  
 )  
 Defendants. )

----- )  
 )  
 THE FOOTBALL ASSOCIATION PREMIER )  
 LEAGUE LIMITED, BOURNE CO., et al., )  
 on behalf of themselves and all )  
 others similarly situated, )  
 )  
 Plaintiffs, )

vs. ) NO. 07-CV-3582  
 )  
 YOUTUBE, INC., YOUTUBE, LLC, and )  
 GOOGLE, INC., )  
 )  
 Defendants. )

----- )  
 )  
 VIDEOTAPED DEPOSITION OF WARREN SOLOW  
 NEW YORK, NEW YORK  
 JANUARY 14TH, 2010

JOB NO. 18509

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VIDEOTAPED DEPOSITION OF WARREN  
SOLOW, held at the offices of Wilson,  
Sonsini, Goodrich & Rosati, PC, 1301  
Avenue of the Americas, New York, New  
York, pursuant to notice, before  
Maureen Ratto, Registered Professional  
Reporter and Notary Public of the State  
of New York on January 14, 2010, at  
10:13 a.m.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SUSAN J. KOHLMANN, ESQ.

919 Third Avenue, New York, NY 10022

(212)891-1690

skohlmann@jenner.com

FOR THE DEFENDANTS:

WILSON, SONSINI, GOODRICH & ROSATI, LLP

BY: MICHAEL H. RUBIN, ESQ.

650 Page Mill Road, Palo Alto, CA 94304

650-849-3311

MRUBIN@wsgr.com

1                   what Mark Ishikawa is referring to when  
2                   he identifies project number two.

3                   Q.       That would be the same for  
4                   Paramount Project 1 and Paramount  
5 11:51:14       Project 2?

6                   A.       I'm unsure of the nomenclature  
7                   that Mark Ishikawa may use internally  
8                   and how it maps to the agreed upon  
9                   contracts between the two companies  
10 11:51:33       that are identified by statement of  
11                   work.

12                  Q.       It's possible, then, based on  
13                  your understanding, that BayTSP is  
14                  referring to projects by different  
15 11:51:50       names than Viacom is. Is that what  
16                  you're saying, Mr. Solow?

17                               MS. KOHLMANN: Objection as to  
18                               form. You can answer.

19                  A.       I'm saying that I have -- it has  
20 11:52:04       recently been brought to my attention  
21                  that the identification of projects or  
22                  sub projects or endeavors within BayTSP  
23                  do not map directly to the agreed upon  
24                  contracts, statement of works between  
25 11:52:33       the two organizations.

1 Q. Do the -- does that degree of  
2 variance in the mapping of project  
3 name, based upon what you recently  
4 learned, have an impact on the  
5 11:53:01 execution by BayTSP of Viacom's  
6 instructions?

7 MS. KOHLMANN: Objection as to  
8 form.

9 A. I've not yet seen that  
10 11:53:22 manifested in performance.

11 Q. Have you investigated it?

12 A. No.

13 Q. Without regard to any specific  
14 project, as a general proposition,  
15 11:54:00 BayTSP is charged by Viacom with  
16 sending takedown notices to online  
17 services. Isn't that correct?

18 MS. KOHLMANN: Objection as to  
19 form. You can answer.

20 11:54:14 A. That is a component of -- of the  
21 services they provide.

22 Q. And with regard to that  
23 component of the services they provide,  
24 there are some online services to which  
25 11:54:38 BayTSP is authorized to send takedown

1 notices on Viacom's behalf and there  
2 are other online services with respect  
3 to which BayTSP is not authorized to  
4 send takedown notices. Isn't that  
5 11:54:50 right?

6 MS. KOHLMANN: Objection as to  
7 form.

8 A. Yes.

9 Q. Which online services has BayTSP  
10 11:55:03 been authorized to send takedown  
11 notices to?

12 A. Those services that are listed  
13 in the agreed upon and counter signed  
14 statement of works between the two  
15 11:55:27 companies. I believe that that list  
16 would include YouTube, Google video,  
17 MySpace and Yahoo video, at least for a  
18 period of time.

19 Q. Can you recall any others?

20 11:55:45 A. I'm sorry. I'll need  
21 clarification here and perhaps my  
22 answer will be clarifying.

23 I can't speak to the scope of  
24 the Paramount projects. They may have  
25 11:56:10 included other sites. They may or may

1 not have. As I said, there is a P2P  
2 component missing out of his  
3 description or -- of what he refers to  
4 as Viacom Project 1.

5 11:56:25 Q. To be clear, when you say "he"  
6 you are referring to Mr. Ishikawa in  
7 the document sent to you titled  
8 "Warren's answers" in the form of  
9 Exhibit 3?

10 11:56:38 MS. KOHLMANN: Objection. You  
11 can answer.

12 A. Yes.

13 Q. My question was not limited to  
14 that document or to Mr. Ishikawa, just  
15 11:56:45 to be clear.

16 A. Okay. Could you repeat it then?

17 Q. Sure. I wanted to step back  
18 from Exhibit 3. You can actually set  
19 it aside if you like, and ask the  
20 11:56:57 broader question.

21 Viacom has authorized BayTSP to  
22 send takedown notices to certain online  
23 services on its behalf but not to  
24 others. Correct?

25 11:57:11 A. Viacom defined the list of sites



1 for which Bay should focus their  
2 efforts. I'm not aware of any document  
3 that said do not look at this site.

4 Q. Okay. But BayTSP is not  
5 11:57:38 authorized to send takedown notices on  
6 Viacom's behalf to any site than those  
7 expressly listed in the agreements  
8 between the two companies. Isn't that  
9 right?

10 11:57:52 A. That I'm aware of, there could  
11 -- to the extent of my awareness, yes.

12 Q. Mr. Solow, can BayTSP on its own  
13 initiative send takedown notices to any  
14 site it so chooses for any Viacom  
15 11:58:09 content that it so chooses?

16 A. No.

17 MS. KOHLMANN: Objection as to  
18 form. Go ahead.

19 A. No.

20 11:58:16 Q. In fact, it can only send  
21 takedown notices to the sites that  
22 Viacom directs it to do so, for the  
23 content that it is directed to send  
24 notices for pursuant to the rules that  
25 11:58:30 Viacom directs. Isn't that right?

1 MS. KOHLMANN: Objection as to  
2 form. You can answer.  
3 A. That is correct.  
4 Q. With respect to the sites for  
5 11:58:41 which BayTSP is authorized to send  
6 takedown notices you identified four;  
7 YouTube, Google video, MySpace and  
8 Yahoo video. My question is, are there  
9 more than those four that you are aware  
10 11:58:54 of?  
11 A. No.  
12 Q. What peer to peer networks is  
13 BayTSP authorized to monitor?  
14 A. I don't know.  
15 11:59:20 Q. Who would know that?  
16 A. It depends on the time period  
17 that you are speaking of.  
18 Q. Today.  
19 A. Stanley Pierre-Louis.  
20 11:59:48 Q. Do you know who would know that  
21 for the period around March, 2007?  
22 A. In March of 2007 Bay was  
23 monitoring eDonkey, my recollection is  
24 failing me there. Anybody who had  
25 12:00:18 access to the statement of work would

1 -- could tell you that. I couldn't  
2 tell you who, off the top of their  
3 heads, could provide that information.

4 Q. Do you know what steps BayTSP  
5 12:00:30 was authorized to take with respect to  
6 P2P networks other than monitoring  
7 those services?

8 MS. KOHLMANN: Objection as to  
9 form. You can answer.

10 12:00:39 A. I don't recall what the exact  
11 protocol was on the P2P side.

12 Q. As part of BayTSP's takedown  
13 work flow for Viacom, BayTSP makes a  
14 copy of each YouTube clip prior to  
15 12:01:06 sending a takedown notice to YouTube,  
16 correct?

17 MS. KOHLMANN: Objection.

18 A. Yes. They endeavor to do that.

19 Q. In fact, they do that prior to  
20 12:01:16 sending a takedown notice, don't they?

21 A. Yes.

22 Q. Is that work flow in place for  
23 each of the four services that BayTSP  
24 monitors for Viacom?

25 12:01:34 MS. KOHLMANN: Objection as to

1 parties or Viacom agents to whom that  
2 information has been provided as you  
3 sit here today?

4 A. I believe it would be provided  
5 14:50:31 to Global.

6 Q. Other than Viacom's agents who  
7 are involved with identifying Viacom  
8 content on the internet, do you know if  
9 it's ever been provided to any other  
10 14:50:49 Viacom agents or any other third  
11 parties?

12 A. As a list? What -- I don't  
13 understand the object of the sentence,  
14 what have I provided? What is it that  
15 14:51:09 we're providing?

16 Q. The information contained in  
17 what Michael Housley aggregates at your  
18 direction regarding the uploading  
19 activity of Viacom and its agents on  
20 14:51:21 the YouTube website and on the internet  
21 generally.

22 MS. KOHLMANN: Objection as to  
23 form.

24 A. For clarity, are we talking  
25 14:51:30 dissemination of a list that Michael

1 Housley has created or are we talking  
2 about the upstream from that? Down  
3 stream of that? I'm still not  
4 understanding what it is that you're  
5 14:51:42 asking is being disseminated.

6 Q. Let's focus first on the  
7 information being disseminated as  
8 aggregated by Mr. Housley.

9 MS. KOHLMANN: Objection.

10 14:51:52 A. Can you -- now, can you repose  
11 the question?

12 Q. Sure. In the form as aggregated  
13 by Mr. Housley at your direction, do  
14 you know if the data regarding Viacom  
15 14:52:11 and its agents uploading activity of  
16 Viacom content on the internet  
17 including YouTube has been provided to  
18 any Viacom agent or other third party,  
19 other than those that are involved in  
20 14:52:24 monitoring the internet for Viacom  
21 content?

22 MS. KOHLMANN: Objection as to  
23 form.

24 A. Yes.

25 14:52:48 Q. Please identify them?

1           A.     I believe that it has been  
2           provided to Jenner & Block and Sherman  
3           & Sterling.

4           Q.     Do you know when that  
5           14:53:04   information was provided to your  
6           counsel in this action?

7           A.     Not specifically, no.

8           MR. RUBIN:   Susan, I'll ask  
9           right now that information be produced  
10          14:53:28   in the case.  If you want to meet and  
11          confer about it I'm happy to do so.  
12          It's plainly responsive.

13          Q.     Other than the partners you've  
14          identified thus far, and setting aside  
15          14:53:46   those that are involved in monitoring  
16          the internet for Viacom content, can  
17          you identify any others to whom that  
18          data has been provided?

19          A.     No.

20          14:54:44   Q.     Do you believe that set of data  
21          is comprehensive, Mr. Solow?

22          MS. KOHLMANN:  Objection as to  
23          form.

24          A.     I don't know.

25          14:55:02   Q.     What leads you to be unable to

1 conclude that the data provided to you  
2 from Viacom subsidiaries and Viacom  
3 agents regarding their upload activity  
4 with respect to Viacom content on the  
5 14:55:16 internet and on YouTube might not be  
6 comprehensive?

7 MS. KOHLMANN: Objection.  
8 Misstates the record. You can answer.

9 A. When one doesn't know the extent  
10 14:55:30 of the universe of a data set it's hard  
11 to make a determination that something  
12 is missing.

13 Q. Have you had any experience that  
14 leads you to conclude that data has  
15 14:55:46 been, from time to time, been missing  
16 from that data set?

17 MS. KOHLMANN: Objection as to  
18 form.

19 A. I can't recall an instance where  
20 14:56:10 an instance or event that played out  
21 which led me to believe that.

22 Q. Is this data set checked prior  
23 to the sending of a takedown notice for  
24 a given piece of content to insure that  
25 14:56:35 that content is not authorized to be on

1 the service at issue?

2 MS. KOHLMANN: Objection as to  
3 form.

4 A. There is an expectation that  
5 14:56:50 will happen, yes.

6 Q. What is the purpose of having  
7 that expectation?

8 A. I want to make sure I understand  
9 the question.

10 14:57:14 Q. Let me ask it again. It might  
11 be a bit confusing. Who checks that  
12 data set prior to sending a takedown  
13 notice to insure that the content in  
14 the takedown notice is not also in that  
15 14:57:38 data set?

16 MS. KOHLMANN: Objection as to  
17 form.

18 A. Generally BayTSP.

19 Q. Is it correct that BayTSP checks  
20 14:58:03 the set of data reflecting what Viacom  
21 subsidiaries and agents have identified  
22 as content they have uploaded to  
23 YouTube and other areas of the internet  
24 prior to sending a takedown notice for  
25 14:58:28 the purpose of insuring that the



1 rule.

2 Q. And you always mark the flag  
3 high importance on e-mails you sent?

4 A. I do not.

5 18:10:42 Q. Do you only do so when you  
6 believe the importance to actually be  
7 high?

8 MS. KOHLMANN: Objection.

9 A. In most cases, yes.

10 18:10:55 Q. What did you write to Ms. Nieman  
11 that you deemed to be so urgent and of  
12 such high importance?

13 A. I was endeavoring to get her to  
14 act quickly to re-- to facilitate the  
15 18:11:18 reposting of these clips.

16 Q. Clips that had been taken down  
17 by Viacom, is that correct?

18 A. That's correct.

19 Q. Didn't you also tell her you had  
20 18:11:28 been under the impression that this  
21 user was on the protected, do not take  
22 down list?

23 MS. KOHLMANN: Objection. You  
24 can answer.

25 18:11:44 A. That is what it says here in

1 this e-mail, yes.

2 Q. Why were you under that  
3 impression at the time you sent this  
4 e-mail, Mr. Solow?

5 18:11:52 A. I don't recall why specifically  
6 I was under that impression.

7 Q. Do you see the response from  
8 Evelyn Espinosa to Courtney Nieman and  
9 Travis Hill?

10 18:12:14 A. Yes.

11 Q. What does it say?

12 A. "Once again... how do you/the  
13 video group KNOW who is on the  
14 protected list? ? ? ? ?"

15 18:12:36 Q. And in fact, "know" is in all  
16 caps, correct?

17 A. Correct.

18 Q. In your experience in e-mail  
19 isn't a word put in all caps for  
20 emphasis?

21 A. Often.

22 Q. How did Courtney or the video  
23 group know who was on the protected  
24 list?

25 18:12:59 MS. KOHLMANN: Objection as to

1 form.

2 A. I don't know.

3 Q. In fact, it was your  
4 understanding at least on May 1st that  
5 18:13:07 there was some breakdown in that  
6 process, right?

7 MS. KOHLMANN: Objection as to  
8 form.

9 A. Right. Although, I did couch it  
10 18:13:20 as I was under the impression. So  
11 given an intimate understanding of how  
12 I communicate, that was my way of  
13 giving them a chance to correct me  
14 where I was wrong.

15 18:13:38 Q. Indeed. But it was in fact your  
16 impression at the time that there was  
17 some breakdown in the process regarding  
18 confirming whether or not a clip was  
19 authorized prior to issuance of a  
20 18:13:50 takedown notice. Isn't that right?

21 MS. KOHLMANN: Objection.

22 A. My impression was that this user  
23 was or should have been on a protected  
24 do not take down list.

25 18:14:04 Q. Do you know if a retraction was

1 sent for any or all videos attached to  
2 the 66 in 2008?

3 A. I believe retractions were sent  
4 for these clips.

5 18:14:13 Q. Do you know if those videos are  
6 life on the service today?

7 A. I don't believe they are.

8 Q. But didn't you just testify that  
9 Viacom issued a retraction for those  
10 18:14:34 videos?

11 MS. KOHLMANN: Objection.

12 A. Can we have the court reporter  
13 read back my answer?

14 Q. Why don't you just answer it  
15 18:14:44 again, Mr. Solow?

16 A. I'd say it would be more  
17 consistent to rely on my answer.

18 Q. I'll ask you the question again.  
19 It is your understanding that BayTSP  
20 18:14:55 issued a retraction for some or all the  
21 videos set forth in the those attached  
22 to Exhibit 28 on Viacom's behalf?  
23 Isn't that right?

24 A. Yes.

25 18:15:07 MR. RUBIN: Let's mark Exhibit

1 29.

2 (SolowP-29 is received and  
3 marked for identification.)

4 Q. Mr. Solow, Exhibit 29 is a  
5 18:15:44 document produced by BayTSP in this  
6 action bearing BayTSP 001124869  
7 consists of a retraction notice sent by  
8 BayTSP to YouTube on May 1st, 2007 just  
9 a few hours after the e-mail we saw in  
10 18:16:14 Exhibit 28.

11 A. Yes.

12 Q. Do you recognize this document?

13 A. No. I do not.

14 Q. Is this a document that contains  
15 18:16:32 a retraction of some or all of the  
16 notice of alleged infringement  
17 contained as attachments to Exhibit 28?

18 MS. KOHLMANN: Objection. You  
19 can answer.

20 18:16:43 A. I don't know, short of going  
21 through and matching everyone of these  
22 video IDs to the IDs in here, I don't  
23 know.

24 Q. Let's short cut that and just  
25 18:17:04 focus on one.

1 A. Okay.

2 Q. If you can pull up Exhibit 28 in  
3 front of you.

4 A. Yes.

5 18:17:09 Q. And turn to the second page.

6 A. Yes.

7 Q. Do you see that video ID  
8 enclosed in the takedown notice in the  
9 first in time e-mail?

10 18:17:20 A. The one that ends in W8.

11 Q. Exactly, the one that ends in W8  
12 on the page that ends in Bates number  
13 951.

14 A. Yes.

15 18:17:29 Q. If I can turn your attention now  
16 to Exhibit 29.

17 A. Yes.

18 Q. Do you see there's a long list  
19 of URLs that end in video IDs?

20 18:17:40 A. Yes.

21 Q. If I can bring your attention to  
22 the eighth from the bottom?

23 A. Yes.

24 Q. Do you see that that's the same  
25 18:17:49 video ID that's identified in the

1 second page of Exhibit 28?

2 A. Yes.

3 Q. Rather than repeating this  
4 exercise for every one of them, would  
5 18:18:02 you agree that Exhibit 29 is at least a  
6 retraction notice for some or at least  
7 one of the videos represented in the  
8 takedown notices attached to Exhibit  
9 28?

10 18:18:14 A. Yes.

11 Q. And you have no reason to  
12 believe that the rest of the videos  
13 identified in Exhibit 28 weren't also  
14 contained in retraction notices issued  
15 18:18:25 by BayTSP on Viacom behalf to YouTube,  
16 do you?

17 MS. KOHLMANN: Objection.

18 A. No.

19 Q. But I believe you testified that  
20 18:18:36 it's your understanding that these  
21 videos aren't live on the service  
22 today?

23 MS. KOHLMANN: Objection.

24 Q. Is that right?

25 18:18:43 A. I have not checked that recently

1 but I believe that that is the case.

2 Q. Why would that be the case?

3 A. Because we ultimately determined  
4 that the rights to these clips were not  
5 18:19:08 -- were not those -- were not the  
6 rights of the person who complained  
7 about the -- that was an inarticulate  
8 way of saying that.

9 We believed that the person  
10 18:19:21 filing the or complaining about the  
11 takedown was not the actual rights  
12 owner.

13 MR. RUBIN: I'd like to  
14 introduce Exhibit 30.

15 18:19:39 (SolowP-30 is received and  
16 marked for identification.)

17 Q. When you say "we", Mr. Solow,  
18 who is the "we" that made that decision  
19 or reached that conclusion?

20 18:20:00 A. That was the communal Viacom  
21 legal community, we, the people  
22 involved in this type of work, a  
23 collaborative investigation.

24 Q. Exhibit 30 is a document  
25 18:20:32 produced by BayTSP in this action,



1 bearing Bates number BayTSP 003733804.

2 Do you recognize this document?

3 A. Yes.

4 Q. This is the document that  
5 18:20:55 reflects the communication from Viacom  
6 to BayTSP of the conclusion that you  
7 just described regarding authorization  
8 of the BullRun videos, isn't it?

9 MS. KOHLMANN: Objection as to  
10 18:21:13 form.

11 A. Yes.

12 Q. And this came on May 7th, 2007  
13 isn't that right?

14 MS. KOHLMANN: Objection.

15 18:21:26 A. Yes.

16 Q. In Exhibit 28 we were looking at  
17 a moment ago on May 1st, 2007, the  
18 Tuesday before is when you sent your  
19 urgent e-mail asking that these videos  
20 18:21:38 be restored to the service. Isn't that  
21 right?

22 A. Yes.

23 Q. Mr. Solow, have you ever used  
24 the YouTube service before?

25 18:22:19 A. Yes.

# **Schapiro Exhibit 2**

---

**From:** Courtney Nieman  
**Sent:** Monday, June 04, 2007 3:48 PM  
**To:** 'Solow, Warren'  
**Subject:** RE: Current list of Filtered YouTube Accounts

Warren,

Yes that is LiberalViewer, typo in my list not in the filter.

Courtney Nieman

-----Original Message-----

From: Solow, Warren [mailto:Warren.Solow@viacom.com]  
Sent: Sunday, June 03, 2007 8:37 PM  
To: Courtney Nieman  
Subject: RE: Current list of Filtered YouTube Accounts

Is that really supposed to be livalviewer?

-----Original Message-----

From: Courtney Nieman [mailto:courtneyni@baytsp.com]  
Sent: Tuesday, May 01, 2007 3:53 PM  
To: Solow, Warren  
Cc: Evelyn Espinosa; Mark M. Ishikawa; Courtney Nieman; Travis Hill  
Subject: Current list of Filtered YouTube Accounts

Warren,

We thought it might be a good time to update the list of filtered accounts:

irenemariemodels  
thesparksfly  
BadBoyRecords  
reaction2006  
Vlogging  
FutureWorld77  
shishka  
ladyfragment  
bpfrecrods  
Livalviewer  
vhlstaff  
Wiredset  
jerseymouth1  
laurenceegibbs  
Snackboard  
Damonjohnson  
Isitfridayyet  
SpikeTV  
bestweekevertv  
reno9112miami  
TNAWrestling  
TXCANY  
powermadeak47  
bravenewfilms  
victorweb  
cbs  
universalmusicgroup  
blacktreemedia  
bullrunvideo

Please let me if there are any additions that need to be made to this list. If anyone at

Viacom has or is using a YouTube account to put up material.

Courtney Nieman  
Manager Client Services  
BayTSP, Inc.  
408-341-2314  
AIM: BayTSPCanne  
Have you checked out BayTSP's Piracy news web log?  
<http://www.baytsp.com/weblog>

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The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone.

This message was prepared at the request of counsel.

# **Schapiro Exhibit 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	X	
	:	
JAMES C. PACENZA, SR.,	:	
	:	
Plaintiff,	:	04 Civ. 5831 (SCR)
	:	
-against-	:	<b>DECISION AND ORDER</b>
	:	
IBM CORPORATION,	:	
	:	
Defendant.	:	
	X	

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STEPHEN C. ROBINSON, U.S. District Judge:

**I. Background**

James Pacenza, Sr. (the “Plaintiff”) brought suit on July 27, 2004 against IBM Corporation (the “Defendant”), alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, and parallel state law provisions. Defendant filed a motion for summary judgment on December 7, 2006, and Plaintiff filed his opposition to the motion for summary judgment on January 19, 2007.<sup>1</sup> As part of that filing, Plaintiff also filed a cross-motion for summary judgment, even though he had not previously indicated his intention to do so. The parties appeared for a conference before this Court on February 2, 2007, at which point Defendant requested permission to file a motion to strike all or part of various documents submitted by Plaintiff as part of his voluminous January 19, 2007 filings. Defendant filed its motion to strike on February 16, 2007; Plaintiff opposed the motion to strike on March 2, 2007, and also filed a cross-motion to strike, again without any prior indication of his intention to cross move.

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<sup>1</sup> Defendant requested leave to exceed this Court’s 25-page limit for its memorandum of law in support of its motion. On November 22, 2006, we granted Defendant’s request, and permitted both parties to file memoranda of law of up to 35 pages in support of their respective positions.

Specifically, Defendant raises objections to four specific documents or categories of documents: (i) Plaintiff's 29-page memorandum entitled "Analysis of Contradictions and Dissembling Found in Defendant's Deposition Testimony" (the "Deposition Analysis"); (ii) the declarations of Plaintiff's attorney Michael Diederich ("Diederich"), Plaintiff, and Plaintiff's wife, Gladys Pacenza ("G. Pacenza"); (iii) Defendant's statement of facts pursuant to Local Rule 56.1 ("Plaintiff's Rule 56.1 Statement"); and (iv) various exhibits annexed to Plaintiff's motion papers. For the reasons discussed below, Defendant's motion to strike is GRANTED IN PART AND DENIED IN PART, and Plaintiff's cross-motion to strike is DENIED.

## **II. Analysis**

### **A. Deposition Analysis document**

Defendant argues that Plaintiff's Deposition Analysis is an effort to evade this Court's page limitation for memoranda of law in support of motions, which in this case was extended to 35 pages for both parties. In the table of contents of the Deposition Analysis, Diederich describes the purpose of the document: "[s]et forth below are excerpts from transcripts of the depositions conducted in this action...*with commentary intended to put the testimony in context regarding the facts of this litigation*" (emphasis added).

Frequently in the Deposition Analysis, Diederich makes an argumentative statement, then purportedly supports that statement with citations to deposition testimony; elsewhere in the document, Plaintiff's counsel simply makes an argument without even citing to supporting sections of deposition testimony. Each and every page of this exhibit provides an example of impermissible argument. This is precisely the type of factual and legal analysis that is proper to include in a memorandum of law in support of and/or in opposition to a motion for summary judgment. It is clear that what Plaintiff has sought to do here is to provide this Court with an

additional 29 pages of argument and analysis above and beyond that set forth in his 35-page memorandum of law.<sup>2</sup> Accordingly, Defendant's motion to strike the Deposition Analysis (Plaintiff's Ex. 8) in its entirety is GRANTED.

## **B. Plaintiff's declarations**

Fed. R. Civ. P. 56(e) makes clear that "supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Accordingly, the Second Circuit has held that a court may "strike portions of an affidavit that are not based upon the affiant's personal knowledge, contain inadmissible hearsay or make generalized and conclusory statements." Hollander v. American Cyanamid Co., 172 F.3d 192, 198 (2d Cir. 1999). In Hollander, the Second Circuit affirmed a district court ruling striking portions of an affidavit because the affidavit at issue was "riddled with inadmissible hearsay, conclusory statements and arguments, and information clearly not made on the affiant's personal knowledge," and "more resembled an adversarial memorandum than a bona fide affidavit." Id. (internal quotations omitted). It is certainly not uncommon for courts in this district to strike portions of affidavits when they are not based on personal knowledge. See, e.g., Roberts v. Ground Handling, Inc., 04 Civ. 4955 (WCC), 2007 U.S. Dist. LEXIS 23441, \*50-\*54 (S.D.N.Y. Mar. 30, 2007).

### **1. Diederich declaration**

Defendant argues that paragraphs 6-39 of Diederich's declaration contain legal arguments and conclusory allegations, and therefore should be stricken. In paragraphs 6-30, Diederich cites

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<sup>2</sup> Ironically, when Defendant first requested that it be allowed to submit a 35-page memorandum of law, Plaintiff's counsel responded this way in a letter dated November 21, 2006: "I do not exactly see the need for an oversized brief in this rather straightforward employment discrimination case."



a document that he has labeled as a Plaintiff's exhibit, and then proceeds to give his own interpretation of that document and explanation of why the document is relevant to his client's case. None of Diederich's analysis of these documents is appropriate for a declaration; the arguments he makes as to the relevance and import of the documents should have been made in his memorandum of law in support of his motion and in opposition to Defendant's motion.

Diederich maintains that he has personal knowledge to support the interpretation and analysis he has provided, and asserts that he gained that knowledge through his representation of Plaintiff in this case. This argument makes little sense – if this were enough to establish personal knowledge for a declaration, all parties in all cases would be able to present such “factual” assertions by their attorneys to supplement all motions submitted to this Court. Not surprisingly, Diederich does not point us to any case law that found this type of “personal knowledge” to be sufficient to support a declaration. Elsewhere, Diederich asserts that he should be permitted to present deposition testimony in support of his summary judgment motion, and to that limited extent he is correct; what is impermissible in his submissions is the extensive commentary he includes with the deposition testimony and the documentary exhibits. As such, all commentary supplied by Diederich in his declaration – that is, all of the text in paragraphs 6-30 other than the text contained in lines in boldface type where Diederich lists “Plaintiff Exhibit 1,” “Plaintiff Exhibit 2,” etc. – is hereby stricken.

Paragraphs 31 and 32 provide a description of the Deposition Analysis document discussed above; these paragraphs also constitute argument and analysis that is inappropriate for a declaration. Paragraphs 33-39 are organized under the heading “Plaintiff's Cross-Motion for Partial Summary Judgment Should Be Granted,” and contain Diederich's legal argument in support of his motion. For example, the declaration states that “Plaintiff makes out a prima facie

case on both his age and disability claims,” Diederich Decl. at ¶ 34, and “IBM’s allegations are clearly not sufficient to warrant termination under IBM’s rules and practice.” *Id.* at ¶ 36. These types of arguments belong in a memorandum of law, and are wholly inappropriate for a declaration. Accordingly, Defendant’s motion to strike paragraphs 6-30, as described above, is GRANTED, and Defendant’s motion to strike paragraphs 31-39 in their entirety is GRANTED.

## **2. G. Pacenza declaration**

Defendant seeks to strike paragraphs 4-11 of G. Pacenza’s declaration because those paragraphs allegedly put forward legal argument and other information that is not based on Plaintiff’s wife’s personal knowledge. Certain of these paragraphs clearly reflect information that is not based on the type of personal knowledge required to support a declaration. For example, G. Pacenza begins paragraph 9 of her declaration by admitting that she “was not present at IBM on May 28, 2003,” but then proceeds to give her opinion as to the events of that day, purportedly based on her review of “various pieces of evidence and transcripts” in this case. This is not a proper basis for personal knowledge. Paragraphs 9, 10, and 11 all contain similarly impermissible opinions and legal conclusions, and are therefore stricken from this declaration.

At this point, however, we will not strike paragraphs 4 through 8 of the G. Pacenza declaration. Much of the content of these paragraphs relates to G. Pacenza’s observations of her husband’s psychological condition, her beliefs about the origins and severity of this condition, and her description of the hardships ostensibly caused by the illness. Without examining the entire record of this case in detail, we assume for the purposes of this decision that Plaintiff will put forth objective medical evidence of these psychological conditions, and will not seek to rely solely on the self-interested statements of Plaintiff and Plaintiff’s wife to support his claim for disability. Further, as to statements about her husband that may constitute hearsay, we also

assume that Plaintiff himself could put forward some of these statements, which would vitiate the hearsay issue for many of them. If Plaintiff does put forth objective medical evidence and testimony from Plaintiff, Defendant is not prejudiced by the inclusion of G. Pacenza's statements here; if Plaintiff does not provide that evidence, this Court, in deciding the motions for summary judgment, will be able to give appropriate weight to these statements.

While certain sentences within paragraphs 4 through 8 – such as the statement in paragraph 7 where G. Pacenza offers her view as to why Plaintiff was fired from IBM – clearly contain impermissible conclusions and are not necessarily based on personal knowledge, we believe it unnecessary to proceed through these paragraphs line by line at this stage. This Court will be able to give the appropriate weight to these statements in deciding the motions for summary judgment. Allowing these five paragraphs to remain in the G. Pacenza declaration does not present any substantial hardship to Defendant in preparing its opposition to Plaintiff's cross-motion or its reply in support of its own motion for summary judgment. Accordingly, Defendant's motion to strike paragraphs 4 through 8 of the G. Pacenza declaration is DENIED, and Defendant's motion to strike paragraphs 9 through 11 of the G. Pacenza declaration is GRANTED.

### **3. Plaintiff's declaration**

Defendant seeks to strike a total of approximately 59 paragraphs from Plaintiff's declaration, again because those paragraphs allegedly put forward legal argument and other information that is not based on his personal knowledge. For the reasons described above, we will not exclude paragraphs that constitute Plaintiff's self-serving "diagnosis" of his own medical condition; if Plaintiff puts forth objective medical evidence regarding his condition, Defendant is not prejudiced by the inclusion of Plaintiff's statements here, and if Plaintiff does not provide

that evidence, this Court will be able to give appropriate weight to these statements. Plaintiff's own views as to the causes of his psychological conditions and the purported coping mechanisms he used to deal with those problems are of little value without additional objective evidence to support those conclusions. That said, it is the judgment of this Court that it is not appropriate to strike such paragraphs from Plaintiff's declaration at this time.

There are certain portions of Plaintiff's declaration, however, that we will strike because they are not based on Plaintiff's personal knowledge: (i) the second sentence of paragraph 93 ("My supervisors saw no problem with my Internet usage"); (ii) the second sentence of paragraph 95 (beginning "My IBM manager, Mr. Mihans, was certainly was aware (sic)"); (iii) the second clause of paragraph 96, indicating Plaintiff's belief that his Internet "addiction was beneficial both to IBM and [Plaintiff]"; (iv) the first sentence of paragraph 97, indicating Plaintiff's belief that Internet addition was "an addiction which IBM permitted"; (v) paragraphs 102 and 103; (vi) the second and third sentences of paragraph 140, concerning what IBM allegedly knew; (vii) the first sentence of paragraph 154, about what "appeared obvious" regarding Mihans's views; (viii) paragraph 159; (ix) paragraphs 180-181; (x) the second sentence of paragraph 183, regarding what "should have been reflected" on Plaintiff's performance evaluation; and (xi) paragraph 185.

We will also strike the following paragraphs because they contain legal arguments or conclusions, not facts based on Plaintiff's personal knowledge: paragraphs 104, 121, 125-126, 132 (including footnote 2), 133-136, 142-144, 161-167, 169-171, 175, 177, 182, and 186.

Accordingly, as specified above, Defendant's motion to strike various paragraphs of Plaintiff's declaration is GRANTED IN PART and DENIED IN PART.

### C. Plaintiff's Rule 56.1 Statement

Local Rule 56.1 requires parties submitting a motion for summary judgment to include a:

“separate, short and concise statement...of the material facts as to which the moving party contends there is no genuine issue to be tried.... The papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried.... Each statement by the movant or opponent...must be followed by citation to evidence which would be admissible.”

Various other courts in this district have held that Rule 56.1 statements are not argument, and must contain factual assertions with citation to the record rather than conclusions, and that a motion to strike impermissible sections of a Rule 56.1 statement may be appropriate. See, e.g., U.S. Info. Sys. v. IBEW Local Union No. 3, No. 00 Civ. 4763 (RMB) (JCF), 2006 U.S. Dist. LEXIS 52938, \*9 (S.D.N.Y. Aug. 1, 2006); Rodriguez v. Schneider, No. 95 Civ. 4083 (RPP), 1999 U.S. Dist. LEXIS 9741, \*4 at n.3 (S.D.N.Y. June 29, 1999). Here, Defendant argues that Plaintiff's Rule 56.1 Statement in support of his cross-motion for summary judgment and in opposition to Defendant's motion for summary judgment contains impermissible argument and conclusions in lieu of facts.

In Plaintiff's memorandum of law in opposition to Defendant's motion to strike, Diederich repeatedly argues that to grant the motion to strike would deprive Plaintiff of the opportunity to lay out all of the factual support for his case. In reality, however, Plaintiff could have set forth all of the *facts* necessary to support his claim in the Rule 56.1 Statement – indeed, that is the purpose of the Rule 56.1 Statement. Diederich apparently confuses *facts* with argument and analysis, which has forced the Court to separate the former from the later and remove the argument and analysis when it has been presented in an impermissible form. As with

all of the other documents discussed here, Plaintiff's Rule 56.1 Statement goes well beyond the permitted purposes of that document and includes paragraph after paragraph of inappropriate argument and analysis that has no place in a Rule 56.1 Statement.

Upon review of Plaintiff's submission, this Court agrees with Defendant's characterization of Plaintiff's Rule 56.1 Statement. Accordingly, the following paragraphs of Plaintiff's Rule 56.1 Statement in support of his cross-motion are hereby stricken, because they contain argument and/or conclusions that do not belong in a document of this nature: a; b; c; p; dd; ee; hh; ss; and uu.

In his counter-statement of material facts prepared in response to Defendant's Rule 56.1 Statement, Plaintiff includes lengthy narratives that contain extensive argument and conclusion, none of which is permitted in a Rule 56.1 Statement. Moreover, a significant number of paragraphs in Plaintiff's Rule 56.1 Statement contain no citations whatsoever to the record in this matter. The following paragraphs are hereby stricken for one or more of the aforementioned reasons: 6(b); 7; 8; 9(a-c, f-g); 10; the heading preceding paragraph 11; 11; 12-13; 15-20; 21(c); 23-29; 31-34; 36-40; 43(c); 44-48; argument preceding paragraph 49; and 49-58.

Defendant's motion to strike sections of Plaintiff's Rule 56.1 Statement is GRANTED IN PART and DENIED IN PART.

**D. Plaintiff's exhibits**

Finally, Defendant objects to certain exhibits included in Plaintiff's motion papers because those exhibits either contain writing or editing marks that were not part of the original documents. Further, Defendant objects to the explanatory notes supplied by Plaintiff's counsel in conjunction with certain documents. Defendant's motion to strike these documents for their lack of authenticity is GRANTED.

Accordingly, the following exhibits are stricken from Plaintiff's submission: Ex. 1 (annotated versions of pages Bates-stamped D00329, D00343, D00346, D00403, and D00408 only); Ex. 2; Ex. 4 (page D00288 only); Ex. 5 (cover sheet; annotated versions of pages D00175, D00176, and D00177 only); Ex. 8 (see section II.A, supra); Ex. 9 (cover sheet; annotated versions of pages D00151, D00154, D00155 only); Ex. 11 (annotated version of page D00471 only); Ex. 12 (annotated versions of Def. Exh. Q p.1 and Def. Exh. Q p. 2; annotated versions of pages D00128 and D00130 only); Ex. 13 (cover sheet; annotated version of pages D00129 and D001720 only); Ex. 14 (annotated version of page D00171 only); Ex. 15 (cover sheet only); Ex. 17 (cover sheet; annotated version of Defendant's Statement of Position to the Equal Employment Opportunity Commission only); Ex. 18 ("Comments" page; two "summary" pages prepared by Diederich; annotated version of pages D00489, D00499, D00506, D00508, D00509, D00520, and D00521 only); Ex. 21 (cover sheet only); and Ex. 24 (page entitled "Various type sizes" only).

In certain instances, Plaintiff submitted un-annotated versions of the documents that he impermissibly annotated with his original motion papers; this ruling does not strike the un-annotated versions of these documents that were submitted with the original motion papers. Further, Diederich apparently believed he could correct the problem of filing annotated exhibits by submitting to this Court a large volume of papers that includes many documents that were not part of the original submission to the Court. This Court hereby rejects Plaintiff's exhibits 26, 27, and 28 – we will not sift through this large, undifferentiated mass of documents to find the handful of substitutes for pages that Plaintiff improperly filed in his motion papers. Further, Plaintiff cannot expand the record on summary judgment by hundreds of pages submitted as part of briefing on the *motion to strike*.

We will, however, give Plaintiff one final opportunity to correct his improper annotations; Plaintiff may provide this Court, in conjunction with his next filing in this case, an un-annotated copy of the individual pages stricken from the record because of their annotations. This instruction is not to be construed as permission to cure any other defects with the documents mentioned above.

**E. Plaintiff's cross-motion to strike**

Plaintiff apparently filed his cross-motion to strike for two reasons: (1) “as a matter of caution”; and (2) “because Defendant IBM has submitted its motion to strike.” See Pl. Mem. of L. at 16. Neither of these reasons seems to be an appropriate basis for a motion to strike, and perhaps it is for this reason that Plaintiff devotes only a single page to his “motion” (despite being well short of this Court’s 25-page briefing limit), and does not support his motion with any legal citation. Further, Plaintiff’s cross-motion is, in certain parts, comically vague. For example, Plaintiff argues that he “should not be subjected to public disclosure of confidential medical/psychological treatment unrelated to this action,” id., but does not point the Court to a single page of Plaintiff’s medical records that he believes should be stricken from the record. In contrast to Defendant’s motion to strike, which specified the paragraphs and, in some cases, the particular sentences to which the motion to strike applied, Plaintiff, it seems, would have this Court make individualized determinations as to each and every document without the Plaintiff having done any of the initial screening work himself. In sum, as Plaintiff has offered no legal citations in support of his motion, and/or has offered no explanation as to which of Defendant’s documents he believes should be rejected by this Court, Plaintiff’s cursory cross-motion to strike is DENIED.



### III. Conclusion

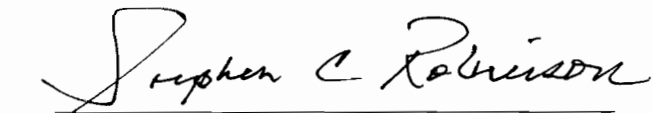
For the reasons discussed above, Defendant's motion to strike is GRANTED IN PART AND DENIED IN PART, and Plaintiff's cross-motion to strike is DENIED. The Clerk of the Court is directed to terminate the motion at docket number 28.

Further, the Court hereby orders the following schedule for submissions on Defendant's motion for summary judgment and Plaintiff's cross-motion for summary judgment:

- Defendant's opposition to Plaintiff's cross-motion for summary judgment is due no later than August 24, 2007. Defendant's submission is limited to the standard 25 pages allowed by this Court for opposition papers.
- *Both parties* are required to submit any replies in support of their motions for summary judgment no later than September 21, 2007. Note that these submissions are to be filed simultaneously by the parties on that day. Defendant's reply is limited to the standard 10 pages permitted by this Court. Plaintiff's reply may be up to 25 pages.

IT IS SO ORDERED.

Dated: July 26, 2007  
White Plains, New York

  
\_\_\_\_\_  
Stephen C. Robinson  
United States District Judge

# **Schapiro Exhibit 4**

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**From:** Wilkens, Scott B [SWilkens@jenner.com]  
**Sent:** Thursday, February 18, 2010 2:47 PM  
**To:** Rubin, Michael  
**Cc:** Kohlmann, Susan J.; 'Gitterman, Noah Siskind'; Volkmer, Bart  
**Subject:** Watch Data

Michael,

I am writing in reference to our last meet and confer regarding watch data, As we have noted before, and as we repeat here, we do not understand the relevance of the video viewing data for an account that was used to upload authorized marketing materials, in some cases only one or two clips. And as we have repeatedly emphasized, any purported relevance of such data has to be weighed against the privacy interests at stake for the accounts at issue. You agreed during the last call that any non-anonymized watch data produced would be produced pursuant to the new highest level of confidentiality under the protective order, which we believe is important in light of the privacy interests that attach to accounts used for personal viewing. Although we continue to dispute Defendants' claim of relevance, in order to reach agreement and ensure that the watch data for all parties is produced expeditiously, following is a list of YouTube account names, each of which was used by Viacom to upload one or more authorized Viacom marketing clips to YouTube. Assuming we can agree on the wording of an appropriate stipulation, which we discussed briefly on the last call, we agree to the production of non-anonymized data for these accounts for the time period previously agreed by the parties. We have already made clear that we do not object to the production of watch data for YouTube accounts that were used by BayTSP, Auditude or a viral marketer acting on Viacom's behalf, although we continue to dispute the relevance of such data. We will circulate a proposed stipulation shortly.

beheard  
bestweekever  
bestweekevertv  
BroadwayJoe  
BroadwayJoe415  
chu2007  
Damonjohnson  
Demansr  
FiveChemical  
JackassTwoMovie  
keithhn  
mosjef73  
mysticalgirl8  
MTV2  
MTV2AllThatRocks  
mtvnewsinterns  
MTVSneakAttack  
NMarketing  
Paraccount  
ParamountClassics  
ParamountGermany  
paramountpictureshow  
ParamountVantage  
ParkMyVibe  
PinkStrawberry  
Reaction2006  
reno911miami  
SpikeTV  
StuntmanForever  
thinkmtv  
veehonerockz

VH1staff  
virtualmtv

Regards,  
Scott

---

**Scott B. Wilkens**

Jenner & Block LLP  
1099 New York Avenue, N.W.  
Suite 900  
Washington, DC 20001-4412  
Tel (202) 639-6072  
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[www.jenner.com](http://www.jenner.com)

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# **Schapiro Exhibit 5**

## MTV SERIES STATUS RECAP

SHOW / AGENCY	STATUS	NEXT STEPS
<b>The Hills</b> Wiredset	- Viral marketing thru March	- Provide weekly clips & update MySpace page: <a href="http://www.myspace.com/thehillsonmtv">www.myspace.com/thehillsonmtv</a> - Provide weekly clips
<b>Sweet 16</b> Wiredset	- Viral marketing thru March	- Provide weekly clips? Not worth it for one more week - Provide weekly viral clips
<b>Dancelife</b> Wiredset	- Viral marketing thru March 5	- Provide content for voting widget weekly
<b>Engaged &amp; Underage</b> Wiredset	- Viral marketing thru March	- Provide weekly viral clips
<b>Road Rules</b> Wiredset	- Viral marketing thru season - Decide if wanna go March + April	- Provide weekly viral clips
<b>Bam's Unholy Union</b> ADD Marketing	- Viral marketing thru season - All invoices paid	- Deliver agreement to PWInsider & get signed.
<b>Wrestling Society X</b> ADD Marketing	- Viral marketing thru season - All invoices paid - <a href="http://www.pwinsider.com">www.pwinsider.com</a> needs to be paid; invoice already submitted, just need contract	- Deliver agreement to MaxPreps & get signed.
<b>Two-A-Days</b> Total Assault	- Viral marketing thru season - All invoices paid - <a href="http://www.maxpreps.com">www.maxpreps.com</a> needs to be paid; invoice already submitted, just need contract	- Decide if wanna continue viral throughout season.
<b>Human Giant</b> Wiredset	- Viral marketing/clip release: Feb & March - Production (Sam Grossman) readying viral clips for release. - Decide if wanna go throughout season - CoolBirth redesigning MySpace page & website	

# **Schapiro Exhibit 6**

# Comedy Central

## Viral Content Distribution and Monitoring Recommendation

### Objectives:

- Be where our audience is - drive digital buzz around our shows and stars.
- Understand Comedy Central's position in ever expanding world of self published content.

### Method:

- Distribute Comedy Central content to viral video sites, entertainment sites, blogs, underground multi-genre sites, Latin sites and anything new that may come along.
  - Sites to include Youtube, Gawker, Myspace, CollegeHumor, Friendster, etc.
- Monitor and report on reach and viral strength of Comedy Central content by tracking views and adoptions of streams.
  - Tools used to include Yahoo! Buzz Index, Google Blog Monitoring, Technorati and others.
- Where applicable, offer branded product giveaways to niche community sites, in exchange for deep links to ComedyCentral.com/Motherload.
  - Can be good way to create user generated commentary on products and shows.

### Agency Partner:

- **Iced Media** - specialist in integrated digital media & viral marketing.
  - Clients include Paramount Pictures (Jackass 2 & Nacho Libre), Sony, Def Jam, Universal, Bad Boy Entertainment etc.

### Time and Scope:

- Six month period with no restrictions on content volume.
  - Bi-weekly standard reports with special reports upon requests
- Iced Media will distribute content & provide reporting, per the above methodology.
- \$40,000 for all services



# **Schapiro Exhibit 7**



425 W 13th St  
Suite 504  
NYC NY 10014

T 212 242 3400  
F 212 242 3464

www.wiredset.com

# RENO911!

## ***Online/Viral Marketing Plan***

**This plan follows the strategy we put forth in our last proposal; it follows this scope:**

- **Viral Marketing Meets Online Press** – Obtain high profile and credible placement at the most highly trafficked and relevant sites
- **Original Content Play**
  - Comedy Central provides exclusive clips for marketing collateral
  - Allow us to pick clips from week prior episode that we know will be viral
- **Video Marketing** – Syndicate and obtain prominent featured placements at over 30 important social video channels
- **Reporting** – Leverage our proprietary analytics tool, InfoFilter, to track online progress of your shows and view the results of your marketing, sales and advertising efforts
- **Social Network Marketing** – Editorial featured, prominent promotions, asset syndication
- **Promotional Partnerships** – Identify valuable promotional opportunities with existing and emerging social and online media networks and blogs

## **Online Publicity/Editorial – Traditional Online Press Meets Viral Marketing**

- Obtain high profile and credible placement on the most highly trafficked and relevant sites
- Leverage our relationships across the web to secure prime placement and editorial
- Initially focus on the premiere of the season as a whole, with complete outline of upcoming season, guest appearances, and other major events
  - Target sites for season long promotion partnerships and exclusive (more details in section below)
- After premiere, weekly focus on each upcoming episode with previews and clips
  - Placement will include features, news items, select contests, etc.
  - Key target sites include:
    - **Top Tiers** – AOL, Yahoo!, MSN
    - **TV** – TV Addict, TVgasm, Zap2It
    - **Comedy** – TheOnion, Slate, Fark
    - **Entertainment** - AceShowBiz, Shakefire, AndPop
    - **Gossip/Celeb** – Perez Hilton, Pink is the New Blog, PopSugar
    - **Must See Media** – College Humor, Radar, Double Agent
    - **Viral / Humor** – Bullz-Eye, Double Viking, Weak Game
    - **Men's Interest** – Men's Fitness, Double Viking, Red Balcony



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www.wiredset.com

- **College** – Colleges.com, College Tonight, U Magazine
- **Men's Interest** – Men's Fitness, Double Viking, Red Balcony
- **Urban** – Vibe, All Hip Hop, SOHH
- **Blog Tastemakers** – Stereogum, ModernAge, BrooklynVegan
- **Pop Culture Magazines** – Spin, Blender, Rolling Stone
- **Film** – IMDB, Rotten Tomatoes, I Watch Stuff
- **Major Entertainment Channels** – E! Online, People.com, US Weekly

### **Social Video Marketing**

- Syndicate any video TEASERS to social video channels, drive back to site
  - YouTube, iFilm, MetaCafe, Broadcaster, and 30 others
  - Tag with appropriate keywords and write detailed video description
- Obtain premium placement on homepages of these social video channels
  - Will collect hundreds of thousands of views

### **Marketing ROI / Campaign Reporting**

- Wiredset will leverage our web analytics tool, Infofilter, to provide real-time tracking and reporting throughout campaign
- We compile weekly reports delivered on the day best for you, including Infofilter
- Measures web presence, traffic, adoption, blog buzz, and other key metrics

### **Social Network Marketing**

- Create Reno 911! Community on Facebook, MySpace, Bebo and other networks by distributing assets in creative and unique ways. Defer to you for best appropriate strategy.
- Focus on social bookmarking, delicious, Clipmarks, etc.
- Digg and other link blog aggregators.

### **Promotional Partnerships**

- Team with existing and emerging social and online media networks and blogs with exclusive content from Reno 911!, for a limited time (1-2 days then available everywhere)
- Match Reno 911!'s content with the most relevant sites and video channels to engage core fans and reach new core fans:
  - **Potential Website Partners**
    - Bebo
    - iMeem
    - Blender
    - Double Viking



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NYC NY 10014

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F 212 242 3464

[www.wiredset.com](http://www.wiredset.com)

- Double Agent
- Crave Online
- Weak Game
- Dot Comedy
- Stereogum
- Defamer
- The Apiary
- **Potential Video Channel Partners**
  - Super Deluxe
  - Veoh
  - Daily Motion

### **Search Engine Optimization and Marketing**

- No outreach or optimization but overall SEO should be raised from the social network and other outreach
- Our viral marketing, video marketing, and social network marketing all have an ancillary effect on SEO. The networks and destinations we achieve placement on are all Google first page results drivers. Your search engine digital footprint is made and made stronger via our marketing and the placement on these key sites and networks.

# **Schapiro Exhibit 8**

To: Kevin Donahue <kevin@youtube.com>  
From: Apmann, Todd <Todd.Apmann@mtvstaff.com>  
Cc:  
Bcc:  
Received Date: 2006-02-15 17:32:16 GMT  
Subject: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

---

Hey Kevin-

Great talking to you last week! I'm very excited about all the different possibilities of working with YouTube for MTV2 and MTV. Wanted to give you a heads up that MSN may come in as a national sponsor of the Andy Milonakis contest, in which case they will be the official video upload / contest entry destination.

I'd prefer to work with YouTube for all of it, though, and will know for sure by March 1st. However, I will send you a proposal by end of next week regardless so we'll have all the details worked out in plenty of time. Even if MSN does come in, I'd still like to work with you on the contest in any way possible.

Also, I am the person you should talk to about getting MTV & MTV2 video content on a regular basis. Please send me a few bullet points on how you envision this partnership and we'll start conversations from there.

Thanks so much,

Todd

Todd Apmann  
Director, Grassroots Marketing  
MTV - MTV2 - MTV HITS - MTV JAMS  
212.846.6942  
todd.apmann@mtvstaff.com

---

# **Schapiro Exhibit 9**

---

From: Leslie North <leslie.north@t-3.com>  
Date: Tue, 21 Feb 2006 17:09:51 -0600  
To: Lam, Cuong <Cuong.Lam@mtvstaff.com>  
Subject: RE: Outreach for Andy and Wonder

Hi Cuong,

Here are the sites that received the clips. I know some of them may overlap with what you have done but I honestly don't think it is a big deal. It may have given them the extra nudge to get something up. :-)

aintitcool.com

Askmen.com

Bob and David

College Humor

Crapville

CraveOnline

Double Agent

Double Viking

ebaums world

Fart.com

Gamespot

Heavy

IGN

IMDB

insound.com

New grounds

TheFader.com

TV.com

UGO

Viceland.com

YouTube

Thanks,

Leslie



---

.....

T3

Leslie North

Media Director

212.404.7045 x30

<mailto:leslie.north@t-3.com> leslie.north@t-3.com

---

From: Lam, Cuong [mailto:Cuong.Lam@mtvstaff.com]  
Sent: Tuesday, February 21, 2006 5:01 PM  
To: Leslie North  
Subject: RE: Outreach for Andy and Wonder

Great! Also note, we are already on sites like CollegeHumor.com and YouTube.com, etc. (PR did a big push as well). But we should leverage some of the buys to aggressively promote it on their homepage.

---

From: Leslie North [mailto:leslie.north@t-3.com]  
Sent: Tuesday, February 21, 2006 1:29 PM  
To: Lam, Cuong  
Subject: Outreach for Andy and Wonder

Hi Cuong,

We posted the clips and have given access to the web sites that we have discussed. I will have my team put together the detailed list for you but I wanted you to know that everything has been posted and we have given access to the clips to the sites to pick up.

Stayed tuned for the list.

When will you be able to provide the Feb 7th Quick times?

Thanks,

Leslie

.....

T3

Leslie North

Media Director

212.404.7045 x30

<mailto:leslie.north@t-3.com> leslie.north@t-3.com

# **Schapiro Exhibit 10**

---

Subject: Re: Flickr & Del.icio.us  
From: "Amy Powell" <>  
To: Kristina Tipton  
Cc: Megan Crowell  
Date: Fri, 10 Mar 2006 17:27:27 +0000

great! thanks.

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures



----- Replied by Amy Powell on 3/10/2006 9:27:21 AM -----

From: Kristina Tipton

03/10/2006 09:18 AM

To: Amy Powell

cc: Amy Powell, Megan Crowell

Subject: Re: Flickr & Del.icio.us Notes document link <<http://godfather3.paramount.com/88256e710071b6d7/38d46bf5e8f08834852564b500129b2c/6d2d69fb4f7c97f18825712d005e5081>>

Both YouTube and Del.icio.us have the Nacho Confessional trailer up, and Scott knows they are both a priority for us to get Nacho assets on:

[http://www.youtube.com/watch?v=\\_ULZRrg7LRQ&search=nacho%20libre](http://www.youtube.com/watch?v=_ULZRrg7LRQ&search=nacho%20libre)

<http://del.icio.us/thatsfunny>

Thanks!

Kristina Tipton  
Coordinator, Interactive Promotions & Publicity  
Paramount Pictures  
323-956-8453

----- Replied by Kristina Tipton on 3/10/2006 9:13:51 AM -----

From: Amy Powell

03/10/2006 09:10 AM

To: Amy Powell

cc: Kristina Tipton, Megan Crowell

Subject: Re: Flickr & Del.icio.us Notes document link <<http://godfather4.paramount.com/88256f1d007573c4/38d46bf5e8f08834852564b500129b2c/a3ed4f84e428e01a8825712c00070e04>>

KT: can i get an update?

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures



---

----- Replied by Amy Powell on 3/10/2006 9:10:10 AM -----

From: Amy Powell  
03/08/2006 05:17 PM  
To: Amy Powell  
cc: Kristina Tipton, Megan Crowell  
Subject: Re: Flickr & Del.icio.us Notes document link <<http://godfather3.paramount.com/88256e710071b6d7/38d46bf5e8f08834852564b500129b2c/572717427923a20b88257128008270ac>>

KT: did we reach out to these sites with the confessional trailer?

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures



----- Replied by Amy Powell on 3/8/2006 5:16:22 PM -----

From: Amy Powell  
03/05/2006 03:44 PM  
To: Megan Crowell  
cc: Kristina Tipton  
Subject: Re: Flickr & Del.icio.us

megan- thanks so much for this great analysis.

it sounds like we should concentrate on del.icio.us & youtube.

KT: can you have Scott Hurwitz start concentrating on both sites asap?

thanks.

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures



-----Megan Crowell/Marketing/MP/Paramount\_Pictures wrote: -----

To: Amy Powell/Marketing/MP/Paramount\_Pictures@Paramount\_Pictures  
From: Megan Crowell/Marketing/MP/Paramount\_Pictures  
Date: 03/01/2006 04:06PM  
cc: Kristina Tipton/Marketing/MP/Paramount\_Pictures@Paramount\_Pictures  
Subject: Flickr & Del.icio.us

Hi Amy,

Just wanted to follow up from earlier this week when you asked about opportunities to integrate our movies into Flickr & Del.icio.us. For Flickr, I don't feel that there are any meaningful ways to promote existing content within their site. However, if we were to get talent or filmmakers to shoot a production diary of sorts, I think this would be something that might attract attention & interest from their users. I'd imagine we could get optimal presence by launching this on a portal or film site, and then once off exclusive the photos could be extended to Flickr as part of a wide distribution. If we were limited to, for instance, one behind the scenes Beowulf pic, once off exclusive, we could post it to Flickr from a dummy user account & mix in other random photos for a sense of authenticity.

---

As for del.icio.us, I think the key way to integrate here, is to add on to the video sharing site strategy, by linking to our content (i.e. clips on YouTube) & tagging these links with numerous relevant terms. For Nacho I'm sure we could come up with 50+ terms (funny, wrestling, Jack Black, etc). Please let me know your thoughts on this and the broader video sharing strategy. Looking forward to actualizing these ideas.

Megan Crowell  
Paramount Pictures Interactive Marketing  
323.956.8471  
fax: 323.862.1107

# **Schapiro Exhibit 11**

---

Subject: Clips & Viral Video Promotion  
From: Lam, Cuong <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER  
ACCOUNTS/CN=USER/CN=LAMC>  
To: Exarhos, Tina  
Cc: Date: Thu, 30 Mar 2006 18:59:43 +0000

Tina:

Below is a list of sites that have promoted our video content - exclusive and non-exclusive. Plus, some sites where our content "spread" onto. Let me know if you have questions. Thanks.

Ifilm.com

Viral Clips:

Wonder Showzen - Mr. Body & American Dreams

Andy Milonakis - The People's Chomp & Comb Over

Exclusive Clips:

Wonder Showzen - Aunt Flo

Andy Milonakis - Pizzazz

YouTube.com

Viral Clips:

Wonder Showzen - Mr. Body, American Dreams & Season 2 Trailer

Andy Milonakis - The People's Chomp, Comb Over & Season 2 Trailer

TV.com

Viral Clips:

Wonder Showzen - Mr. Body & Season 2 Trailer

Andy Milonakis - The People's Chomp & Season 2 Trailer

Exclusive Clips:

Andy Milonakis - House Call

CollegeHumor.com

Viral Clips:

Wonder Showzen - Mr. Body

Andy Milonakis - People's Chomp

IGN.com

Viral Clip:

Wonder Showzen - Mr. Body

Exclusive Clip

Andy Milonakis - Smart Ralphie

AOL

Exclusive Clip

Wonder Showzen - What is a hero?

MSN

Exclusive Clips - Season 2 Trailer & Beauty Pageant

Additional sites that our viral clips "spread" onto:

- MovieWeb.com

- AllDumb.com

- DoubleAgent.com

- Crapville.com

- 
- Heavy.com
  - Viceland.com



# **Schapiro Exhibit 12**

To: Kevin Donahue <kevin@youtube.com>  
From: Andrew\_Lin@paramount.com <Andrew\_Lin@paramount.com>  
Cc:  
Bcc:  
Received Date: 2006-04-13 17:58:11 GMT  
Subject: Re: trailer is on youtube home page

---

that is funny...i was just writing you a thank you note... it is amazing how many people are commenting on this trailer - EVERYBODY here is excited that the trailer is on YouTube. Congrats on the continuing good press today too! You guys definitely have the Silicon Valley's longest winning streak right now!

----- Replied by Andrew Lin on 4/13/06 10:56:27AM -----

From: "Kevin Donahue"  
04/13/06 10:51 AM  
To:  
cc:  
Subject: trailer is on youtube home page

Your trailer is up on our home page. Fyi.

Kevin Donahue  
VP Marketing & Programming  
71 E. Third Ave | San Mateo, CA | 94401  
kevin@youtube.com | [REDACTED]

My YouTube Video Pick of the Day: Ronaldinho - Nike

---

Attachments:  
ATT00044.jpg

# **Schapiro Exhibit 13**

---

Subject: Angry Kid / You Tube  
From: "Tamar Teifeld" <>  
To: scott@icedmedia.com  
Cc: Date: Thu, 04 May 2006 18:36:42 +0000

Hey Scott,

I showed the link to Mickey and he wants you to start sending it around, but quietly. We don't want to "condone" what he is doing - but we definitely want to get it out there since it is so hilarious.

Thank you!

# **Schapiro Exhibit 14**

To: Kevin Donahue <kevin@youtube.com>  
From: Andrew Lin [REDACTED]  
Cc: heather gillette <heather@youtube.com>; Andrew Lin <andrew\_lin@paramount.com>  
Bcc:  
Received Date: 2006-05-05 18:47:14 CST  
Subject: Re: Hi Kevin.../Question

---

Thanks Kevin.

Heather - Good to meet you... would love to speak with you. In the short term, could you make sure that An Inconvenient Truth trailer is not removed. It is definitely authorized to be on YouTube and we have many partners linking/embedding it (including our own site).

Please let me know if you have any questions...

Andrew  
andrew\_lin@paramount.com  
323/956-8873

On May 5, 2006, at 9:54 AM, Kevin Donahue wrote:

Andrew,

Looking forward to hammering out the plan for the new filmmakers program with you. Some time next week. Does Friday afternoon work for you? Maybe 2pm?

RE: the notice below, I was informed of this by our copyright agent yesterday. Apparently Paramount is using some third party service to search YouTube and other sites for copyright infringing material and this is one of the pieces of content that the third party, acting on Paramount's behalf (as I understand it) wanted us to remove.

You can learn the details from Heather Gillette who I've cc'd here.

Best,  
Kevin

---

From: Andrew Lin [REDACTED]  
Sent: Thursday, May 04, 2006 11:33 PM

To: Kevin Donahue  
Subject: Hi Kevin.../Question  
Importance: High

Kevin,

Great seeing you this week and thanks again for coming down and meeting some of the Paramount Classics team. Let me know if you're free next week to hammer out the "new filmmakers" program.

Also - I just received this note today... is there someone that I should speak to at you YouTube regarding the below message? Obviously, we're very happy with the Trailer being showcased on YouTube. I'm not sure who's the "third party" who complained.

best,

Andrew

-----

Andrew Lin - v: [REDACTED] aim/msn: [REDACTED] skype: [REDACTED]

Begin forwarded message:

From: DMCA Complaints >  
Date: May 4, 2006 11:46:55 AM PDT  
To: ParamountClassics >  
Subject: Video Rejected: Copyright Infringement

Dear Member:

This is to notify you that we have removed or disabled access to the following material as a result of a

third-party notification claiming that this material is infringing:

An Inconvenient Truth - Trailer: <http://www.youtube.com/watch?v=TUjP6dqPynE>

Please Note: Repeat incidents of copyright infringement will result in the deletion of your account and all videos uploaded to that account. In order to avoid future strikes against your account, please delete any videos to which you do not own the rights, and refrain from uploading additional videos that infringe on the copyrights of others. For more information about YouTube's copyright policy, please read the Copyright Tips guide.

If you elect to send us a counter notice, to be effective it must be a written communication provided to our designated agent that includes substantially the following (please consult your legal counsel or see 17 U.S.C. Section 512(g)(3) to confirm these requirements):

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

Such written notice should be sent to our designated agent as follows:

DMCA Complaints  
YouTube, Inc.  
PO Box 2053  
San Mateo, CA 94401  
Email: [copyright@youtube.com](mailto:copyright@youtube.com)

Please note that under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

Sincerely,  
YouTube, Inc.

To change or cancel your email notifications, go to your email options .

Copyright © 2006 YouTube, Inc.

abuse-copyright.tmpl



# **Schapiro Exhibit 15**

---


Subject: Re: youtube  
From: "Amy Powell" <>  
To: Megan Wahtera  
Cc: Date: Fri, 16 Jun 2006 01:49:38 +0000

thanks

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures



-----Megan Wahtera/Marketing/MP/Paramount\_Pictures wrote: -----

To: Amy Powell/  
From: Megan Wahtera/Marketing/MP/Paramount\_Pictures  
Date: 06/15/2006 06:48PM  
Subject: Re: youtube

It's up.

<http://www.youtube.com/watch?v=2mjTCXMWsf8>

Megan Wahtera  
Director, Motion Picture Interactive Marketing  
Paramount Pictures  
P: 323.956.8516 | F: 323.862.1107

----- Replied by Megan Wahtera on 6/15/2006 6:23:02 PM -----  
Inactive hide details for From:Megan WahteraFrom:Megan Wahtera

From:Megan Wahtera  
06/15/2006 06:22 PM  
To: Amy Powell  
cc:  
Subject: Re: youtube

we just asked him to do so...he's on it right now.

Megan Wahtera  
Director, Motion Picture Interactive Marketing  
Paramount Pictures  
P: 323.956.8516 | F: 323.862.1107

----- Replied by Megan Wahtera on 6/15/2006 6:21:50 PM -----  
Inactive hide details for From:Amy PowellFrom:Amy Powell

From:Amy Powell  
06/15/2006 06:21 PM  
To: megan\_wahtera@paramount.com  
cc:  
Subject: Re: youtube

can you have kirk post to zb's youtube page tonight?

Amy Powell

---

Senior Vice President, Interactive Marketing  
Paramount Pictures

[REDACTED]

-----Forwarded by Amy Powell/Marketing/MP/Paramount\_Pictures on 06/15/2006 06:20PM -----

To: [REDACTED]  
From: Amy Powell/Marketing/MP/Paramount\_Pictures  
Date: 06/15/2006 06:01PM  
cc: [REDACTED]  
Subject: Re: youtube

done. will post tonight.

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures

[REDACTED]

----- [REDACTED] wrote: -----

To: [REDACTED]  
From: [REDACTED]  
Date: 06/15/2006 05:58PM  
Subject: Re: youtube

if it's legal. put it in mine.

On Jun 15, 2006, at 5:58 PM, [REDACTED] wrote:

wierd. i just wanted to know if you're ok with us posting the LK montage to your profile on youtube... or do you want us to post from an anonymous source?

Amy Powell  
Senior Vice President, Interactive Marketing  
Paramount Pictures

[REDACTED]

<mailto:----- [REDACTED] ----- [REDACTED] wrote: -----

To: [REDACTED]  
From: <[REDACTED]>  
Date: 06/15/2006 05:55PM  
Subject: Re: youtube

nothing in email

On Jun 15, 2006, at 5:53 PM, [REDACTED] wrote:

>